

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ARISE FOR SOCIAL JUSTICE; )	
çOISTE?; NEW ENGLAND STATE-AREA )	
CONFERENCE OF THE NAACP; )	
REV. TALBERT W. SWAN, II; )	
NORMAN W. OLIVER; DARLENE )	
ANDERSON; GUMERSINDO GOMEZ; )	
FRANK BUNTIN; RAFAEL )	
RODRIGUEZ; and DIANA NURSE, )	Civil Action No. 05-30080 MAP
	)
Plaintiffs, )	
	)
v. )	
	)
CITY OF SPRINGFIELD and )	
SPRINGFIELD ELECTION COMMISSION, )	
	)
Defendants. )	
	)
	)

**OPPOSITION TO MOTION TO MODIFY TRIAL PROCEDURES**

Plaintiffs strenuously object to defendants' motion to modify trial procedures, which has been filed literally on the eve of trial. Defendants have had plaintiffs' affidavits since February 2, 2007.<sup>1</sup> Defendants' request to change procedures that the Court put in place long ago comes too late.

Furthermore, contrary to defendants' Certificate of Consultation, defendants raised the issue of supplementation on February 26, 2007, and plaintiffs responded the next day with a letter, a copy of which is attached hereto as Exhibit A. The letter stated opposition to wholesale supplementation, and noted that "Both sides had to submit their affidavits simultaneously, and if we begin a process of supplementation, it could go on ad

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<sup>1</sup> Plaintiffs filed 28 of their 29 trial affidavits on February 2, 2007, and filed one additional affidavit on February 5, 2007.

infinitum.” The letter then proposed that defendants identify topics for supplementation to see if the parties could reach agreement about them. The letter also stated that any supplementation should be by affidavit before the close of plaintiffs’ case.

Defendants responded with an email, a copy of which is attached hereto as Exhibit B, stating that plaintiffs’ suggestion was “ludicrous,” and expressing the intention to make a counterproposal. Defendants never made a counterproposal concerning supplementation.

### **CONCLUSION**

Therefore, plaintiffs respectfully request that the motion to modify trial procedures be denied.

Respectfully submitted,

ARISE FOR SOCIAL JUSTICE; *¿OISTE?*;  
NEW ENGLAND STATE-AREA  
CONFERENCE OF THE NAACP; REV.  
TALBERT W. SWAN, II; NORMAN W.  
OLIVER; DARLENE ANDERSON;  
GUMERSINDO GOMEZ; FRANK BUNTIN;  
RAFAEL RODRIQUEZ; and DIANA NURSE

By their attorneys,

/s/ Paul E. Nemser

Paul E. Nemser (BBO #369180)  
Monica M. Franceschini (BBO #651208)  
Anna-Marie L. Tabor (BBO #662364)  
GOODWIN PROCTER LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
(617) 570-1000

/s/ Nadine Cohen

Nadine Cohen (BBO #090040)  
LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS  
UNDER LAW OF THE BOSTON BAR  
ASSOCIATION  
294 Washington Street, Suite 443  
Boston, MA 02108  
(617) 988-0609

Dated: March 5, 2007

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Opposition to Motion to Modify Trial Procedures was filed electronically with this Court on this 5th day of March, 2007 and that all parties will be served via the Court's electronic filing system.

/s/ Paul E. Nemser  
Paul E. Nemser (BBO #369180)

# EXHIBIT A

GOODWIN | PROCTER

Paul E. Nemser  
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goodwinprocter.com

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Counselors at Law  
Exchange Place  
Boston, MA 02109  
T: 617.570.1000  
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February 27, 2007

**By E-Mail and First Class Mail**

Edward M. Pikula, Esq.  
Deanne Bogan Ross, Esq.  
Springfield Law Department  
36 Court Street  
Springfield, MA 01103

**Re: Arise for Social Justice, et al. v. City of Springfield, et al.**  
**Civil Action No. 05-30080 MAP**

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Dear Ed and Deanne:

We've given some thought to the issue you raise about including testimony responsive to our affidavits. We are opposed to any kind of wholesale supplementation by live testimony or by affidavit. Both sides had to submit their affidavits simultaneously, and if we begin a process of supplementation, it could go on ad infinitum. That said, we propose that you identify the topics on which you wish to supplement to see if we can agree whether supplementation is necessary. You mentioned, for example, the Michelle Webber issue, and we are willing to discuss supplementation on that topic.

We do believe that any supplementation should be done by affidavit, and any supplemental affidavit should be submitted before the close of plaintiffs' case.

Very truly yours,

*Paul Nemser (A21)*

Paul E. Nemser

PEN:ra

# EXHIBIT B

## Franceschini, Monica M

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**From:** Pikula, Edward [epikula@springfieldcityhall.com]  
**Sent:** Wednesday, February 28, 2007 11:43 AM  
**To:** Tabor, Anna-Marie; deb.ross@verizon.net  
**Cc:** Nemser, Paul E; Franceschini, Monica M; Nadine Cohen  
**Subject:** RE: Arise for Social Justice, et al. v. City of Springfield, et al.

i have reviewed this letter. your proposal is ludicrous. the way trials work is plaintiff goes first and then defendant. until you are done, we can't respond. simultaneous filing was a good idea to save time, but it can't be used to deprive the defendants their right to a fair trial. this looks to me like another attempt by your firm to gain an unfair advantage. i will prepare a counter proposal later today or tomorrow.

**Attorney Edward M. Pikula**  
**City of Springfield Law Department**  
**36 Court Street**  
**Springfield, Massachusetts 01103**  
**Phone: (413) 787- 6085**  
**Fax: (413) 787- 6173**

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-----Original Message-----

**From:** Tabor, Anna-Marie [mailto:ATabor@goodwinprocter.com]  
**Sent:** Tuesday, February 27, 2007 7:02 PM  
**To:** Pikula, Edward; deb.ross@verizon.net  
**Cc:** Nemser, Paul E; Franceschini, Monica M; Nadine Cohen  
**Subject:** Arise for Social Justice, et al. v. City of Springfield, et al.

Ed and Deanne,

Please see the attached letter.

Best regards,  
Anna

<<Letter\_20070227.pdf>>

Anna-Marie L. Tabor, Esq.  
Goodwin Procter LLP | Exchange Place, Boston, MA 02109 | T 617.570.1619 | F 617.523.1231 |  
atabor@goodwinprocter.com

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\*\*\*\*\* **IRS**  
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